

REMARKS

Claim 13 is rejected under 35 U.S.C. 102 (b) as being anticipated by Knowles et al (US 5,869,819 A). Claims 13-14, 17-18, and 86-88 are rejected under 35 U.S.C. 102 (b) as being anticipated by Antognini et al. (U. S. Patent No. 6,176,427 B1). Claims 15-16 and 47-54 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Antognini et al. in view of Hashimoto et al. (U.S. Patent No. 6,902,114 B2). Claims 73-85 are rejected under 35 U.S.C. 103 (a) as unpatentable over Antognini et al. in view of Barile et al (U.S. Patent No. 5,837,986 A). The teachings of Antognini et al have been discussed above.

Regarding the rejection of claim 13 over Knowles, claim 13 recites in combination with numerous other elements a first data input area facilitating entry of a designator for a formatted file in combination with an encoder for encoding into at least one symbol a formatted file in accordance with the designator. Applicants respectfully assert that the Examiner has not established that Knowles teaches the element of "a data input area facilitating entry of a designator for a formatted file" in combination with an "encoder for encoding into at least one symbol a formatted file in accordance with the designator" as recited in the combination of claim 13. In rejecting claim 13 the Examiner asserts that the "designator for a formatted file" which is to be encoded is satisfied by the teaching of Knowles at fig. 7a and a teaching at column 15, lines 6-10 of Knowles which states as follows:

As indicated in Block A of FIG. 7A, the method involves first determining completely or partially, a set or information resources on the Internet (e.g., WWW or FTP Servers) that the composer wishes he or another to visit in the immediate or future.

However, applicants have been unable to identify the elements referred to by the Examiner in rejecting claim 13 over Knowles which the Examiner is contending constitutes a data input area facilitating designation of a formatted file that is to be encoded by a symbol generator. If the Examiner wishes to maintain the rejection of claim 13 over Knowles the Examiner is respectfully requested to explain why the Examiner regards a teaching at column 15, lines 6-10 of Knowles relating to

designation of resource locators to be a teaching relating to entry of a designator of a formatted file that is to be encoded into a symbol.

Claim 13 is also rejected under 35 U.S.C. 102 (b) over Antognini. In addition to the elements noted above, claim 13 recites in combination with numerous additional elements relating to a data input area facilitating entry of command data. In rejecting claim 13 over Antognini the Examiner asserts that the command data related elements of Antognini are satisfied by the teachings at column 9, line 50, to column 11, line 19 of Antognini which recites in part as follows:

FIG. 2 illustrates the method of encoding of the preferred embodiment of the invention. Selection step 201 requires selection of various format parameter values. The parameters include the height and width in printer pixels of each printed data spot, the height and width in printer pixels of each cell, the height and width in printer pixels of the markers, and Marker to Spot, the distance in printer pixels between markers and the data spots.

Applicants respectfully note that in rejecting claim 13 over Antognini the Examiner has referenced a passage that relates to designation of parameters, "Selection step 201 requires selection of various format parameter values." If the Examiner wishes to maintain the rejection of claim 13 over Antognini the Examiner is respectfully requested to explain why the Examiner believes the referenced parameter related teachings of Antognini relate to entry of command data as recited by the applicants. Also regarding the rejection of claim 13 the Examiner is respectfully requested to explain where in Antognini there is a teaching relating to a graphical user interface including a first data input area and a second data input area as recited in claim 13.

Several of the Examiner's rejections are presented in the form of an improper omnibus rejection. For example, claims 15-16, 47-52, and 69-72 are all rejected with following sweeping statement by the Examiner.

Re claims 15-16, 47-54 and 69-72: Antognini et al has been discussed above, but is silent with respect to encode the formatted file into at least one symbol; automatically changes a number of symbols to encode depending; indicate a number of symbols to be encoded; encoding a set of barcodes, a field indicating a total number of symbols of the set, respectively.

Hashimoto et al teaches an encode method and system where the user specifies all setup value; the capacity of the inputted data is greater than the predetermined number, the

data is encoded into more than one barcode; wherein each of the encoded barcode includes a total number of barcodes making up the setting group (figs. 4-7; col. 8, line 1 through col. 10, line 41.)

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Hashimoto et al into the system as taught by Antognini et al for intended use (i.e., encoding data into barcode symbols). Furthermore, such modification would decrease occurrence of read errors due to the division of data into a plurality of barcodes (i.e., at the scanning time, a distance is kept between the bar code reader and a bar code label, whereby a beam is scattered and thus the scan width widens, but the spot worsens, degrading the read accuracy. Therefore, to ensure precise read, the original data needs to be placed in a proper bar code length), thus providing a more accurate system.

Antognini et al as modified by Hashimoto et al has been discussed above and further discloses the graphical interface may include additional input boxes to allow for input of information with respect to other parameters (col. 8, lines 16-18), but is silent with respect to the user indicating number of symbols to be encoded, number of bytes of data into a to-be encoded barcode, and whether a viewable field designated for encoding will be displayed at the time when a symbol encoding the viewable file is read, respectively.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to modify the additional input boxes of Antognini et al/Hashimoto et al to provide the user with the flexibility in selecting desired specific parameters, thus providing a desired encoding result.

This rejection is believed to be improper as an "improperly expressed rejection" in the form of an omnibus rejection as prohibited by MPEP §707.07(d). Specifically, according to the MPEP §707.07(d), Improperly Expressed Rejections, an omnibus rejection of the claim "on the references and for the reasons of record" should be avoided and a plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group. Contrary to this provision of the MPEP, the Examiner presents the rejection of claims 15-16, 47-52, and 69-72 as a single free flowing list. Claims 15-16, 47-52, and 69-72 recite diverse subject matter and accordingly, grouping of claims 15-16, 47-52, and 69-72 into a common group is not permitted under *MPEP §707(d)*. Since no claim numbers are given in the omnibus rejection, it is not clear what the pertinence of the relied upon references are. Therefore, applicants are unable to positively correlate the various sentences of the rejection with specific claims. If the Examiner wishes to maintain the rejections of claim 15-16, 47-52, and 69-72, the Examiner is respectfully requested to state the rejections in a form that can be reasonably be understood by the applicants and in a form other than an omnibus form.

Further regarding claim 47, claim 47 is rejected over Antognini in view of Hashimoto. The Examiner asserts that the skilled artisan taking the teachings of Antognini would be motivated to modify Antognini in accordance with the claimed invention. Among numerous other elements recited in combination, claim 47 recites "a data input area receiving information pertaining to a number of bar codes to encode". It is respectfully asserted that the Examiner has not established that the relied upon prior art has the combination of elements of claim 47. In rejecting claim 47, the Examiner relative to "the data input area receiving information pertaining to a number of bar codes to encode" of claim 47 states:

Hashimoto et al teaches an encode method and system where the user specifies all setup value; the capacity of the inputted data is greater than the predetermined number, the data is encoded into more than one barcode; wherein each of the encoded barcode includes a total number of barcodes making up the setting group (figs. 4-7; col. 8, line 1 through col. 10, line 41.)

It is respectfully asserted that in rejecting claim 47 the Examiner has not even alleged, much less established that the prior art has the elements of claim 47. Whereas claim 47 recites elements relating to a user interface having a data input area receiving information pertaining to a number of bar codes to encode, the Examiner merely alleges that Antognini in view of Hashimoto has the capacity to change a bar code count. It is respectfully asserted that having the capacity to change a bar code count is not the same thing as "data input area receiving information pertaining to a number of bar codes to encode" as recited in the combination of claim 47. The Examiner references Hashimoto, figs 4-7, col. 8, line 1 though col. 10, line 41 in support of the rejection of claim 47. However it is noted that the relied upon section does not satisfy the claim elements. Note for example block S7, fig. 5 of Hashimoto indicates that a changing of a bar code count is responsive to a size determination of information to be decoded. The relied upon section of Hashimoto does not make reference to a "data input area receiving information pertaining to a number of bar codes to encode" as recited in the combination of claim 47. Also regarding the rejection of claim 47 the Examiner is respectfully requested to explain where in the combination of Antognini and Hashimoto there is a teaching relating to a graphical user interface having a data input area.

Regarding claim 52, it is respectfully asserted that the Examiner has not established that the relied upon art references teach or suggests the claim limitations of claim 52. For example, claim 52 recites in combination with numerous additional elements the element of “destination directory designating a storage location for data produced by decoding of symbol encoded by said symbol generator.” Applicants have tried but cannot locate any statement by the Examiner in the Office action of November 14, 2006 relating to “destination directory designating a storage location for data produced by decoding of symbol encoded by said symbol generator.” It appears that the Examiner has not even alleged, much less established that the relied upon prior art has the elements of “destination directory designating a storage location for data produced by decoding of symbol encoded by said symbol generator” as recited in claim 52 in combination with other elements. If the Examiner wishes to maintain the rejection of claim 52, the Examiner is respectfully requested to identify where in the relied upon prior art there is a teaching or suggestion relating to a “destination directory designating a storage location for data produced by decoding of symbol encoded by said symbol generator” as recited in the specific combination of claim 52.

Regarding claim 69, it is respectfully asserted that the Examiner has not established that the relied upon art alone or in combination teaches or suggests the claim limitations of claim 69. For example, claim 69 recites in combination with numerous additional elements the element of “the second input area enabling a user to designate whether a file designated for encoding in said first data input area will be displayed at the time when a symbol encoding the file is read.” Applicants have tried but cannot locate any prior art reference by the Examiner in the Office action of November 14, 2006 relating to “the second input area enabling a user to designate whether a file designated for encoding in said first data input area will be displayed at the time when a symbol encoding the file is read.” It appears that the Examiner has not even alleged, much less established that the relied upon prior art has the elements of “the second input area enabling a user to designate whether a file designated for encoding in said first data input area will be displayed at the time when a symbol encoding the file is read” as recited in claim 69 recited in combination with other

elements. Regarding the "display when read" related element of claim 69, the Examiner has made the general assertion, unsupported by any art reference that it would be obvious to add the noted features into the system of Antognini "to provide the user with the flexibility in selecting desired specific parameters" *November 14, 2006 Office action page 7*. However, where an Examiner elects to rely on official notice in the absence of documentary evidence, specific requirement must be satisfied which are described herein. If the examiner wishes to maintain the rejection of claim 69, the Examiner is respectfully requested to identify where in the relied upon art there is a teaching or suggestion relating to "a second input area enabling a user to designate whether a file designated for encoding in said first data input area will be displayed at the time when a symbol encoding the file is read" as is recited according to the specific combination of claim 69.

Regarding the rejections of claims 73-85, the Examiner's complete statement of rejection as to claims is as follows:

Re claims 73-85: Antognini et al has been discussed above, but is silent with respect to encoding into the symbol a command which when run by a reader that reads the symbol causes the reader to execute one of a plurality of file opening programs.

Barile et al teaches the reader 3 is programmed/reprogrammed by reading barcode 14 (figs. 1 & 2; col. 8, lines 30+).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Barile et al into the system as taught by Antognini et al in order to provide Antognini et al with a more versatile system which can be used to reprogram the reader instantaneously and accurately upon scanning the barcode. Furthermore, such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for intended use due to the fact that a barcode can be encoded with any type of information/data, and therefore an obvious expedient.

The rejection of claims 72-85 are traversed as being in the form of an improperly expressed omnibus rejection.

This rejection is believed to be improper as an "improperly expressed rejection" in the form of an omnibus rejection as prohibited by MPEP §707.07(d). Specifically, according to the MPEP §707.07(d), Improperly Expressed Rejections, an omnibus rejection of the claim "on the references and for the reasons of record" should be avoided and a plurality of claims should never be grouped together in a common

rejection, unless that rejection is equally applicable to all claims in the group. Contrary to this provision of the MPEP, the Examiner presents the rejection of claims 73-85 as a single free flowing list. Claims 73-85 recite diverse subject matter and accordingly grouping of claims 73-85 into a common group is not permitted under *MPEP 707(d)*. Since no claim numbers are given in the omnibus rejection, it is not clear what the pertinence of the relied upon references are. Therefore, applicants are unable to positively correlate the various sentences of the rejection with specific claims. If the Examiner wishes to maintain the rejections of claims 73-85, the Examiner is respectfully requested to state the rejections in a form that can be reasonably be understood by the applicants and in a form other than an omnibus form.

Further regarding claim 73 the Examiner has not asserted that the relied upon prior art has all of the elements of claim 73. For example, as has been described herein whereas claim 73 recites in combination with numerous other elements the element of a "graphical user interface including a second data input area facilitating entry of command data", the Examiner has not established that the primary reference Antognini has the element of "the graphical user interface including a second data input area facilitating entry of command data." If the Examiner wishes to maintain the rejection of claim 73, the Examiner is respectfully requested to identify where in the relied upon prior art there is a teaching relating to "the second input area enabling a user to designate whether a file designated for encoding in said first data input area will be displayed at the time when a symbol encoding the file is read" as recited in the specific combination of claim 73. If the Examiner wishes to maintain the rejection of claim 73 the Examiner is further respectfully requested to explain where in Antognini there is a teaching relating to a graphical user interface having a data input area.

Further regarding claim 77, applicants respectfully assert that the Examiner has not asserted that the relied upon prior art has all of the elements of claim 77. For example the Examiner has not alleged that the relied upon prior art references have the element of "encoding into said at least one symbol a command which when run by a reader that reads said at least one symbol causes said reader to execute one of a plurality of file opening programs." Relative to the above element, it appears that the

Examiner relies on certain teachings of Barile. The Examiner states Barile et al teaches the reader 3 is programmed/reprogrammed by reading barcode 14 (figs. 1-2, col. 8, line 30+). The relied upon section of Barile is as follows:

The original software file is resident in the device 4 in a flash memory 20, which is a non-volatile memory with in-circuit electrical modification capabilities similar to a conventional Random Access Memory device (RAM). In addition, a software update program is stored in non-volatile memory as well. The PDF417 symbol 14 is encoded to include an update codeword as well as the updated software file 8. The Update codeword functions as a flag to instruct the target device 4 that the data encoded in the symbol 14 is a software file to be written into the memory 20. This program is accessed by a software update control function 24 when a system software update is initiated by detecting the Update codeword from the PDF417 symbol 14. Thus, in order to revise the original file, the flash memory 20 is accessed by the software update control 24, which provides timing and control signals effective to write the decoded updated software file 18 into the memory 20 at the appropriate time.

This embodiment of updating the entire software file is useful only when the file is small enough to fit into one or a manageable number of concatenated PDF417 symbols. When the file is relatively large, however, and the number of changes are relatively small, an alternative modification method is used. Referring to FIGS. 2 and 2A, where like elements set forth in FIG. 1 are given like reference numerals, a file of records comprising modification data is generated at the host computer 2, encoded into a PDF417 symbol 14, read by the reader 3, decoded at the target device 4 and merged with the original file in memory 20 to recreate the updated file. In order to implement this partial replacement embodiment of the present invention, the host computer 2 has stored in its memory space an identical copy 6 of the original software file resident in the memory 20 of the target device 4 as well as the updated software file 8 which is desired to be loaded into the target device 4. The host computer 2 also has resident thereon a difference extractor 10 which compares two software files and generates an output file containing a list of differences between them. In particular, the difference extractor 10 is configured to Had the original software file 6 and the updated software file 8. The difference extractor 10, compares the two files and generates (a) a list of locations where the data in the original file has been changed and (b) the data found at those locations. Thus, rather than replacing the entire contents of the flash memory 20 in the target device 4, this embodiment only revises those locations which differ between the original file and the updated file.

Applicants have been unable to identify elements of the relied upon teachings of Barile relating to "encoding into said at least one symbol a command which when run by a reader that reads said at least one symbol causes said reader to execute one of a plurality of file opening programs." If the Examiner wishes to maintain the rejection of claim 77 the examiner is respectfully requested to explain where in Barile or in Antognini there is a teaching relating to "encoding into said at least one symbol a command which when run by a reader that reads said at least one symbol causes said reader to execute one of a plurality of file opening programs."

Regarding claim 86, it is respectfully asserted that the Examiner has not established that the relied upon art alone or in combination teaches or suggests the claim limitations of claim 86. For example, claim 86 recites in combination with numerous additional elements the element of a "symbol generator further being configured so that a designator for a configuration file including user preference configuration data can be designated in said information entry area in combination with an encoder encoding into at least one symbol said configuration file." It appears that the Examiner has not even alleged, much less established that the relied upon prior art has elements relating to a "symbol generator further being configured so that a designator for a configuration file including user preference configuration data can be designated in said information entry area" in combination with "an encoder encoding into at least one symbol said configuration file." If the Examiner wishes to maintain the rejection of claim 86, the Examiner is respectfully requested to identify where in the relied upon prior art there is a teaching relating to a "symbol generator further being configured so that a designator for a configuration file including user preference configuration data can be designated in said information entry area in combination with "an encoder encoding into at least one symbol said configuration file."

In numerous instances in the Office action of November 14, 2006 the Examiner relies upon official notice in support of the claim rejections. For example, relative to claims 15-16, 47-54, and 69-72, the Examiner states:

Antognini et al as modified by Hashimoto et al has been discussed above and further discloses the graphical interface may include additional input boxes to allow for input of information with respect to other parameters (col. 8, lines 16-18), but is silent with respect to the user indicating number of symbols to be encoded, number of bytes of data into a to-be encoded barcode, and whether a viewable field designated for encoding will be displayed at the time when a symbol encoding the viewable file is read, respectively.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to modify the additional input boxes of Antognini et al/Hashimoto et al to provide the user with the flexibility in selecting desired specific parameters, thus providing a desired encoding result.

Relative to claims 73-85, the Examiner states:

Re claims 73-85: Antognini et al has been discussed above, but is silent with respect to encoding into the symbol a command which when run by a reader that reads the symbol causes the reader to execute one of a plurality of file opening programs.

Barile et al teaches the reader 3 is programmed/reprogrammed by reading barcode 14 (figs. 1 & 2; col. 8, lines 30+).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Barile et al into the system as taught by Antognini et al in order to provide Antognini et al with a more versatile system which can be used to reprogram the reader instantaneously and accurately upon scanning the barcode. Furthermore, such modification would have been an obvious engineering variation, well within the ordinary skill in the art, for intended use due to the fact that a barcode can be encoded with any type of information/data, and therefore an obvious expedient.

Official notice without documentary evidence to support an Examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 C.F.R. §1.13. Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

If the Examiner wishes to maintain the rejections of claims rejected based on Official Notice, the Examiner is respectfully requested to provide documentary evidence in support of the various assertions of common knowledge. MPEP §2144.03(A). In providing such evidence, the Examiner is respectfully requested to make reference to the specific combinations of elements of applicants' claims (and not merely the elements of the dependent claims without reference to the elements of the base claim). The Examiner is also respectfully requested to set forth explicitly the reasons for the various rejections based on Office Notice. See MPEP §2144.03(B). The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. MPEP §2144.03(B). It would not be appropriate for the Examiner to take Official Notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known. MPEP §2144.03(A).

Regarding the claims discussed herein, the applicants' selective treatment and emphasis of independent claims of the application should not be taken as an indication that the applicants believe that the Examiner's dependent claim rejections are otherwise sufficient. In fact, it is noted in the Office action, that the dependent claims are rejected without substantial, and in certain instances, without any reference to the limitations of the dependent claims in combination with the base claim elements. Applicants expressly reserve the right to present arguments traversing the propriety of the dependent claim rejections later in the prosecution of this or another application. Further, while applicants herein have not traversed proposed reference combinations based on there being an absence of a motivation to modify, the absence of such a traversal should not be taken as an indicated that applicants agree that motivation has been adequately established. Applicants may present arguments in support of the position that motivation to modify has not been adequately established in a future response.

While the applicants herein may have highlighted a particular claim element of a claim for purposes of demonstrating an insufficiency of an examination on the part of an Examiner, the applicants highlighting of a particular claim element for such purpose should not be taken to indicate that the applicants have taken the position that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present. Applicants note that applicants maintain the right here forward to assert that each claim is patentable by reason of any patentable combination recited therein.

The Examiner will note that new dependent claims 89-96 have been added. New dependent claims 89-96 are believed to be allowable in that they are dependent on an allowable base claim and for the additional combinations of elements they recite. New claims 89-96 are supported throughout the specification. For example, new claim 96 is supported at least by the features shown in Figs. 7a-7j. No amendment presented herein contains new matter.

Accordingly, in view of the above amendments and remarks, applicants believe all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application.

If the Examiner believes that contact with applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicants' representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

Dated: March 14, 2007

Respectfully submitted,

By George S Blasiak
George S. Blasiak
Registration No.: 37,283
MARJAMA & BILINSKI LLP
250 South Clinton Street
Suite 300
Syracuse, New York 13202
(315) 425-9000
Customer No. 20874

GSB/slp/bs